

MAY 18 2005**FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL MERTON IRONS, II,

Petitioner - Appellee,

v.

TOM L. CAREY, Warden,

Respondent - Appellant.

No. 05-15275

D.C. No. CV-04-00220-LKK
Eastern District of California,
Sacramento**ORDER**

Before: REINHARDT, NOONAN, and FERNANDEZ, Circuit Judges.

The parties are ordered to file supplemental briefs, not to exceed 25 pages, within 28 days from the date of this order. The supplemental briefs shall discuss the constitutionality of the standards that Congress has set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. § 2254(d)(1). Specifically, the parties should discuss, in light of *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), and *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997), whether AEDPA unconstitutionally prescribes the sources of law that the Judicial Branch must use in exercising its jurisdiction or unconstitutionally prescribes the substantive rules of decision by which the federal courts must decide constitutional questions that arise in state habeas cases. The

parties should consider whether, under the separation of powers doctrine or for any other reason involving the constitutionality of 28 U.S.C. § 2254(d)(1), this court should decline to apply the AEDPA standards in this case.

This court also certifies the above question to the Attorney General of the United States pursuant to 28 U.S.C. § 2403(a). The Attorney General is permitted to intervene and file a brief, not to exceed 25 pages, within 28 days from the date of this order. If the panel determines that further oral argument would be of assistance, it will schedule such argument and inform the parties, the Attorney General, and any amici at that time. This court also invites interested parties to request leave, within 14 days from the day of this order, to file *amicus curiae* briefs. Should leave be granted, such parties shall have 21 days from the date thereof to file briefs of not more than 20 pages.

Judge Fernandez does not join in this order.